IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.8058 OF 2005

Smt. Sharda Digamber Bhamare,
Aged 32 years, Occ: Nil,
r/o Flat No.8, 2nd Floor,
Vastu Rachna, D.P. Katarap
Road, Badlapur East,
District Thane. .... Petitioner

- Versus -

1. The State of Maharashtra
through the Secretary,
Social Welfare Department,
Mantralaya, Mumbai-400 032.

2. The Divisional Social
Welfare Officer,
Mumbai Region, Mumbai.

3. The Chairman,
Saibaba Education Trust,
O.T. Secrtor, Ulhasnagar-3,
District: Thane.

4. The Head Master,
Saibaba Education Trust
School for Mentally Retarded,
Navjivan Tower, First Floor,
Flat No.105, O.T. Section,
Ulhasnagar-3, District: Thane.

5. The District Social Welfare
Officer, Social Welfare
Section, Zilla Parishad,
Thane. .... Respondents

Shri N.V. Bandiwadekar, Advocate, for the
Petitioner.

Shri C.R. Sonawane, Asst. Government Pleader,
for the Respondent Nos.1, 2 and 5.

Shri V.V. Gangurde, Advocate, for the
Respondent Nos.3 and 4.

CORAM: R.M.S. KHANDEPARKAR &
NARESH H. PATIL, JJ.

DATED: AUGUST 21, 2006

ORAL JUDGMENT (Per R.M.S. Khandeparkar, J.):

1. Heard the learned Advocates for the parties. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner by this petition challenges the Judgment dated 7-10-2005 passed by the Divisional Social Welfare Officer, Mumbai Division, Mumbai along with the order dated 30-4-2003 passed by the respondent No.3 terminating the services of the petitioner.

3. The petitioner was appointed in the post of Psychologist by the respondent No.3 under the order dated 11-8-1997 with effect from 11-8-1997. The said appointment was duly confirmed by the respondent No.2 by its order dated 22-4-1998. The probation period of the petitioner expired in November, 1997 and the respondent No.5 issued a letter of confirmation of her appointment on 7-12-2000. However, on 19-7-2002 the respondent No.3 issued a letter to the petitioner that they were not satisfied with the working procedure of the petitioner as also she was asked to give information about her educational qualification which were duly replied to by the petitioner on 22-7-2002. However, by letter dated

30-4-2003 the services of the petitioner were sought to be terminated on the ground that she has failed to submit the certificate of Clinical Psychologist Master's Degree. The petitioner, therefore, made representation to the respondent No.5 against the said order on 4-7-2003 which was followed by an appeal to the School Tribunal which was filed on 1-8-2003. During the pendency of the appeal, the School Tribunal by its order dated 1-8-2003 directed that in case of any appointment being made in place of the petitioner, the same shall be subject to the decision in the appeal. Meanwhile, in view of the order passed by this Court that the said school like the respondent No.4 wherein the petitioner was employed are recognised by the Social Welfare Department and, therefore, the Maharashtra Employees of Private Schools Act and the Rules are not applicable and hence the appeal under Section 9 was not maintainable, the petitioner withdrew the said appeal on 24-8-2004 and filed the necessary appeal before the respondent No.2 which came to be dismissed by the respondent No.2 by the impugned order dated 7-10-2005.

4. The main ground on which the impugned order is sought to be challenged is that the authority misconstrued the provisions regarding the educational qualification which were required to be satisfied by the petitioner at the time of her entry in the service.

While the educational qualification which were required under the Special Code applicable to the respondent No.4 was that the incumbent was to be a holder of Degree in Psychology, the respondent No.5 wrongly held that the requirement was that of a Psychotherapist or Psychiatrist having Master's Degree in the said subject, in addition that the eligibility was required to be as prescribed by the Rehabilitation Council of India Act, 1992.

5. Plain reading of the provisions of the Special Code, as were applicable to the respondent No.4 at the relevant time, undoubtedly, required the educational qualification in the nature of graduation in Psychology for the post of Psychologist in such schools. This fact has also been duly confirmed by the respondent No.2 in his affidavit in reply filed in this petition. It is also apparent on the face of the order passed on 30-4-2003 by the respondent No.3 that the services of the petitioner were sought to be terminated solely on the ground that the petitioner failed to produce the certificate of Clinical Psychologist Master's Degree. Once the eligibility criteria which was required to be fulfilled by the petitioner was that she should have been the holder of a graduate degree in Psychology and in fact, she did possess the said degree on the date of the appointment, one fails to understand how her

services could have been terminated on account of her failure to produce the certificate of Clinical Psychologist Master's Degree. Since that was the only requirement at the time of entry of the petitioner in service and the petitioner had been confirmed in the service for having satisfied the eligibility criteria as far as the educational qualification was concerned, merely by applying the rules subsequently framed and made applicable prospectively, the respondents could not have terminated the services of the petitioner on the said ground. Indeed, the respondent No.5 totally erred in ignoring this aspect of the matter and confirming the order of termination on the ground which was not available to the respondent No.3 for termination of the services of the petitioner.

6. For the reasons stated above, therefore, the impugned order as well as the order of termination of services cannot be sustained and both are liable to be set aside and the petitioner to be directed to be reinstated in the services of the respondent Nos.3 and 4 forthwith with continuity in service. As regards the back wages, question of issuing any such blanket direction does not arise. There is nothing on record to show that since the date of termination of the services, the petitioner had not been gainfully employed elsewhere. At the same time, since the petitioner is

eager and willing to rejoin the services in terms of the order passed today, her claim for back wages cannot be totally rejected.

7. In the result, therefore, in our considered opinion, while directing reinstatement in service with continuity of service, the petitioner shall be entitled for the back wages to the extent of 30% of the total amount payable for the period during which she was kept out of service. The rule is made absolute in above terms with no order as to costs.

(Naresh H. Patil, J.) (R.M.S.Khandeparkar, J.)

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